

INSURANCE

Dave Heineman
Governor

L. Tim Wagner
Director

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Director Cautions Producers in Use of Misleading Advertisements

There is a good deal of confusion among Medicare beneficiaries regarding the new Medicare prescription drug plans available in January 2006. The Nebraska Senior Health Insurance Information Program (SHIIP) and its volunteers have been tireless in their efforts to educate and assist Nebraska Medicare beneficiaries in understanding the changes.

Unfortunately, a number of licensed insurance producers are taking advantage of consumers' confusion about prescription drug plans, and are using it as a means to promote the sale of unrelated products. Examples include producers who mail lead cards offering information about "Recent Changes in Medicare" in order to obtain appointments to sell life insurance or long-term care coverage, and producers who advertise "Free Workshops" on the topic of Part D drug coverage, in order to increase attendance at presentations designed to generate interest in annuities. Such advertisements may be construed as misleading, and the producers may be ordered to cease and desist distribution.

In pursuing this issue, we sometimes find that the information provided by the producer consists of brochures prepared by SHIIP, or by the Centers for Medicare and Medicaid Services (CMS). These materials are designed to educate beneficiaries as to the new prescription drug plans and are not intended to be advertisements for, or endorsements of, any firm, individual, or product.

We invite producers to let their clients know this material is available, but we strongly caution producers against using any brochure as a sales tool.

LIFE AND HEALTH DIVISION

Filing Procedure for Revised Valuation or Non-forfeiture Interest Rates and Mortality Tables

With life filings where the only change is the valuation or non-forfeiture interest rate and/or mortality table, the company need only submit a cover letter, a revised actuarial memorandum, and a Life and Health Filing Form.

The Life and Health Division has recently received several inquiries as to how companies should proceed with life filings where the only change is the valuation or non-forfeiture interest rate and/or mortality table.

The company need only submit a cover letter, a revised actuarial memorandum, and a Life and Health Filing Form (found at <http://www.doi.ne.gov/lh/guidelin.htm>). The forms themselves do not need to be re-filed.

Regardless of whether the forms are pre-printed or laser printed as needed, or whether the valuation and non-forfeiture basis was filed as variable, this procedure may only be followed if:

- the forms will be revised as of a certain date;
- the only changes being made are to the valuation or non-forfeiture interest rate and/or mortality table; and
- the form number will not be revised.

The cover letter should include a listing of the policy forms being revised, the original approval dates, and the effective date of the revisions.

The cover letter should include:

- a listing of the policy forms being revised;
- the original approval dates; and
- the effective date of the revisions.

The Division will consider this an informational filing. If the company would like a file-stamped copy, please submit the above information in duplicate along with a self-addressed, stamped envelope.

Forms being revised by attaching an endorsement or by making other changes will be considered new filings, and the company will need to follow the procedures outlined in bulletin CB-53.

Forms being revised by attaching an endorsement or by making other changes will be considered new filings, and the company will need to follow the procedures outlined in bulletin CB-53. This bulletin may be viewed on the Department web site: at <http://www.doi.ne.gov/lh/guidelin.htm>.

Please direct any questions to the Life and Health Division at 402-471-2201.

Effective September 1, the Division implemented the Uniform Product Coding Matrix for SERFF filings.

Uniform Product Coding Matrix for SERFF Filings

As Nebraska continues to adopt the speed-to-market initiatives, the Life and Health Division has implemented the Uniform Product Coding Matrix for SERFF filings effective September 1. Nebraska accepts all life, health, credit and annuity filings on SERFF. Please see the SERFF general instructions for more information.

FRAUD DIVISION

The insurance fraud investigator must have the ability to recognize ever-evolving "indicators" to criminal activity.

The Value of Fraud Detection Hints

One should keep in mind that "red flags" and/or "fraud indicators" are somewhat evolutionary in nature. The criminal has an ideal opportunity to learn by his/her mistakes simply due to the nature of insurance fraud. These indicators are ever-changing as the criminal adapts and learns. The insurance fraud investigator must have the ability to recognize ever-evolving "indicators" to criminal activity.

"Fraud indicators" should elicit questions requiring specific answers, and these answers will assist in making a determination on whether or not to continue to pursue the facts surrounding a particular claim and/or insurance matter.

The value of recognizing "fraud indicators" lies in the questions and answers, which they may elicit upon further investigation. Whether one is investigating a claim or simply questioning a claim in which they are personally involved, the elements remain the same. "Fraud indicators" should elicit questions requiring specific answers. These answers will assist in making a determination on whether or not to continue to pursue the facts surrounding a particular claim and/or insurance matter. This, in turn, may lead to the discovery of additional "fraud indicators." It is this process of questions and answers that may ultimately lead to the successful resolution of a claim and/or insurance matter.

The Insurance Fraud Prevention Division is currently in the process of updating the "Fraud Detection Hints" booklet provided to law enforcement and insurance personnel, as well as consumers. If you are interested in receiving a copy, please email IFPD Division Chief, Charles Starr, at cstarr@doi.state.ne.us, or contact Connie Drake, Administrative Assistant, at 402-471-2201.

MARKET CONDUCT DIVISION

Verbally Expressed Health Care Grievances

When a verbal communication of dissatisfaction is received, the company should remind the member of his/her right to submit a written request for a first-level grievance review or of the option to submit a verbal or written request for an expedited review.

The Health Carrier Grievance Act provides for four grievance review procedures.

The company must ensure the complaint will not be handled as a mere inquiry unless the member has indicated he/she does not wish to request a grievance review at the time of communication.

When an insurer offering a managed care plan receives a verbal communication from a member expressing dissatisfaction with the availability, delivery, or quality of health care services, the company should remind the member of his/her right to submit a written request for a first-level grievance review or, if applicable, of the option to submit a verbal or written request for an expedited review. This is also appropriate when the complaint relates to claims payment, handling, or reimbursement for health care services, or matters pertaining to the contractual relationship between a covered person and a health carrier.

If the dissatisfaction being expressed by the member involves an adverse determination, as defined by Neb.Rev.Stat. §44-7303(1), the verbal complaint itself should be considered a request for a standard review of an adverse determination. Such grievance is not subject to the grievance register reporting requirements of Neb.Rev.Stat. §44-7306, however, unless it is a *written* grievance.

The Health Carrier Grievance Act does not distinguish between a grievance review request based on a contractual issue and one based on a medical issue. Rather, the Act simply provides for four grievance review procedures: 1) first-level grievance review concerning any matter except an adverse determination; 2) standard review of an adverse determination; 3) expedited review; and 4) second-level grievance review.

When a member verbally communicates dissatisfaction with regard to a managed care plan, the company must ensure the complaint will not be handled as a mere inquiry unless the member has indicated he/she does not wish to request a grievance review at the time of the communication. Moreover, if the complaint relates to an adverse determination as defined in Neb.Rev.Stat. §44-7303(1), or to an issue warranting an expedited review, the insurer must initiate the standard review of its adverse determination or commence the expedited review, based on the verbal communication.

It is important to note that whenever a member has conveyed his/her dissatisfaction *in writing* regarding any aspect of the

The member should not have to specifically state that he/she is requesting a grievance review.

In many Nebraska counties, building permits are issued without the prerequisite design plan engineering and architectural seals, resulting in the seal requirements sometimes being overlooked.

Insurers and agents are urged to help promote the awareness of these requirements during loss control, sales and underwriting transactions with builders and contractors.

When reviewing bid specifications, please be mindful of design-plan requirements.

managed care plan, written communication should be considered a request for a grievance review and handled under the appropriate review process. The member should not have to specifically state that he/she is requesting a grievance review.

Risk Management and Loss Control for Builders and Contractors

The State of Nebraska Board of Engineers and Architects recently spoke to Director Wagner about design-planning requirements for construction. The board was hopeful that the Department of Insurance along with Nebraska's insurance and bonding professionals could assist in reminding builders and contractors about requirements for engineering and architectural seals. The Board of Engineers and Architects explained that in many Nebraska counties, building permits are issued without the prerequisite design plan engineering and architectural seals. As a result, builders and contractors sometimes overlook the seal requirements.

By failing to procure required design plan services from licensed engineering and architectural professionals, builders and contractors risk the possibility of completing a project that is out of compliance with Nebraska law. Additionally, the services of licensed architectural and engineering professionals help to promote structural and functional safety.

Information about engineering and architectural requirements and brochures can be found on the Board's web site at www.ea.state.ne.us. Certain buildings and construction types are exempt from the requirements. Although the following is not a state-sponsored cite, we located useful contractor licensing information at www.contractors-license.org/ne/Nebraska.html. Cities may have additional requirements.

Insurers and agents are urged to help promote the awareness of these requirements during loss control, sales and underwriting transactions with builders and contractors. When reviewing bid specifications, please be mindful of design-plan requirements.

LEGAL DIVISION

Redomestication of Pacific Life Insurance Company

The redomestication of Pacific Life Insurance Company ("Pacific Life") from California to Nebraska was approved by the Director of Insurance on August 19, 2005, with an effective date of September 1, 2005. Pacific Life has been authorized to engage in the business of insurance in Nebraska since August 19, 1936, and provides life insurance products, individual annuities, and mutual funds, including a variety of investment products for individuals and businesses. In 1997, Pacific Life reorganized from a mutual insurance company to a mutual insurance holding company structure. This reorganization created Pacific Lifecorp, an intermediate stock holding company incorporated in Delaware, and Pacific Mutual Holding Company domiciled in California and owned by members who are policyholders of Pacific Life. Pacific Life has a regional business center located at 1299 Farnam Street in Omaha, Nebraska, currently employing a staff of 139 in an operations processing center, administrative and sales support facility, and a business recovery site providing backup operations for Pacific Life.

The redomestication of Pacific Life Insurance Company ("Pacific Life") from California to Nebraska was approved by the Director of Insurance on August 19, 2005, with an effective date of September 1, 2005.

Mutual Protective Insurance Company Reorganization

Mutual Protective Insurance Company ("Mutual Protective") located in Omaha, Nebraska, filed a Plan of Reorganization with the Director on August 5, 2005. A public hearing was held on September 16, 2005, to hear comment on the Plan. Mutual Protective's Plan proposes the creation of a mutual insurance holding company to be named Medico Mutual Insurance Holding Company, an intermediate stock holding company to be named Medico Holdings, Inc., and the reorganization of the corporate existence of Mutual Protective into a stock insurance company with the new name of Medico Insurance Company. Upon the effective date of the reorganization which is slated to be January 1, 2006, the policyholders' existing members interests in Mutual Protective will be transferred to the mutual insurance holding company with the contract (policy) rights remaining with Medico Insurance Company. The Director of Insurance issued an Order approving the Plan of Reorganization on September 19, 2005. Before the transaction can be finalized, two-thirds of the eligible policyholders must vote to approve the transaction.

Mutual Protective Insurance Company filed a Plan of Reorganization, which was approved by the Director of Insurance in an order dated September 19, 2005.

Nebraska Supreme Court Cases

Hans v. Lucas, 270 Neb. 421 (September 23, 2005)

In January 2003, Jayme Hans agreed to sell her home to Penny Lucas. Lucas moved into the house in February prior to closing, and Hans agreed to maintain fire and extended insurance coverage on the property until closing. While Lucas was cooking french fries in the oven on March 5, a fire broke out causing \$24,683.13 in damage to the home. Hans' insurance company sued Lucas for the damages. The district court granted Lucas summary judgment, finding that Lucas and Hans had intended the risk of fire to be born by Hans.

The issues in this case are whether the doctrine of equitable conversion, which allocates the risk of loss before closing to the buyer, applies.

The Supreme Court of Nebraska held that because the seller had contractually assumed the buyer's risk of loss, the buyer was an implied co-insured for the limited purpose of defeating the subrogation claim.

Molina v. American Alternative Insurance Corporation, 270 Neb. 218 (July 22, 2005)

On April 1, 2000, Manuel Salazar's SUV was hit from behind while stopped, pushing his vehicle into the path of a speeding Scotts Bluff County deputy sheriff. Salazar's fiancé was killed, and Salazar was paralyzed in the accident.

In 2003, the Supreme Court of Nebraska held that despite a finding that the deputy sheriff's negligence caused Manuel almost \$4.5 million worth of damages, the county's legal liability was limited to \$1 million under the Political Subdivisions Tort Claims Act (PSTCA). The county was insured by an umbrella policy with American Alternative Insurance Corporation (AAIC) that provided it would pay up to \$4 million for each "occurrence."

In this case, Salazar's guardian, Molina, brought a direct action against AAIC claiming that Salazar was a third-party beneficiary of the contract between AAIC and Scotts Bluff. By denying to pay damages beyond \$1 million, AAIC was committing fraud by collecting premiums for coverage in excess of the statutory cap.

The preliminary issue in this case is whether Salazar has standing as a third-party beneficiary to bring a direct action against the insurer.

The Supreme Court affirmed the district court's dismissal finding there was no statutory basis for Salazar's claim that he was a third-party beneficiary. The Court also explained that the coverage was not fraudulent because the county's liability from all claimants for a single occurrence under the PSTCA was up to \$5 million.

Blair v. State Farm Ins. Co., 269 Neb. 874 (May 27, 2005)

One night Marcelle Dewitt, loaned her car to her boyfriend who drove his friends, Daniel Kost, Jason Blair, and Tracy Prickett to a dance club. On the way home, an under-insured driver running a red light hit the car. Prickett and Kost were killed, and Blair was injured. Under Nebraska law, insurance companies delivering, issuing for delivery or renewing a policy for an automobile that is primarily garaged in Nebraska must provide under-insured motorist coverage. DeWitt's car was insured under a State Farm Insurance policy issued to her parents in Wyoming, where under-insured motorist coverage is not required, so DeWitt's policy did not include this coverage. DeWitt's policy was renewed during the summer of 1999, while she had her car in New York, where she was working as a nanny.

The issue in this case is where DeWitt's car was principally garaged for the purpose of the Nebraska law. State Farm argued that the car was principally garaged in Wyoming, Marcelle DeWitt's domicile, or New York, where the car was located at the time of renewal.

The Supreme Court held that the car was principally garaged in the state where the insured intends to keep the vehicle most often compared to any other state during the policy period.

Actions Taken Against Producers

CAUSE NO.	ALLEGATION	DISPOSITION
A-1622 Wadlow Rozanek Funeral Home Lincoln, NE	Application for agency license denied.	Order Denial upheld 4/12/05
A-1623 Richard D. Gray, Jr. & United Personal Insurance Omaha, NE	Violated <u>Neb. Rev. Stat.</u> §44-4057 and 44-4059(1)(h). Producer conducted business under name different than legal name; used fraudulent, coercive or dishonest practices.	Consent Order \$1,000 admin. fine 7/26/05
A-1625 Brian M. Schmidt Council Bluffs, IA	Application for producer license denied.	Order License granted 7/11/05
A-1626 David Alan Bozarth Omaha, NE	Violated <u>Neb. Rev. Stat.</u> §§44-1525(11), 44-4054(8) and 44-4059(1)(h). Failed to respond to Department within 15 business days; failed to change business address within 30 days; demonstrated incompetence or untrustworthiness.	Order Producer license revoked 7/20/05

A-1629 Ryan D. Schaake Omaha, NE	Violated <u>Neb. Rev. Stat.</u> §§44-4059(1)(b) & 44-4061. Violated any insurance law; acted as agent of insurer without appointment with the insurer.	Consent Order \$500 admin. fine 8/9/05
A-1631 Cheryl L. Jensen Council Bluffs, IA	Violated <u>Neb. Rev. Stat.</u> §§44-1524, 44-1525 (10) & (12), and 44-4059(1)(b),(e) & (l). Unfair trade practice; false or fraudulent statements on application; accepted application from non-appointed producer; violated any insurance law; misrepresentation; accepted business from non-licensed individual.	Consent Order \$1,000 admin. fine 8/19/05
A-1633 Stephen Letts Lincoln, NE	Violated <u>Neb. Rev. Stat.</u> §§44-1524, 44-1525 (1)(a), (10), and 44-4059(1)(b), & (h). Unfair trade practice; misrepresentation; false or fraudulent statement on application; violated any insurance law; fraudulent, coercive or dishonest practices.	Consent Order \$2,500 admin. fine; producer license suspended 10 days 8/30/05
A-1634 Donald Grantham Lincoln, NE	Violated Title 210 NAC Chapter 19 §§006.01 & 006.02A and 44-4059(1)(b). Failed to submit replacement form with application; violated any insurance law.	Consent Order \$1,000 admin. fine 9/12/05
A-1637 Joann Janousek-Green Lincoln, NE	Violated <u>Neb. Rev. Stat.</u> §§44-4059(1)(b),(h) & (l). Violated any insurance law; fraudulent, coercive or dishonest practices; accepted business from non-licensed agent; paid commission to non-licensed agent.	Consent Order \$1,200 admin. fine 9/16/05

Actions Taken Against Companies

CAUSE NO.	ALLEGATION	DISPOSITION
C-1526 Fortis Insurance Company Milwaukee, WI	Violated <u>Neb. Rev. Stat.</u> §§44-1524 and 44-1525(12). Unfair trade practices; accepted application from a non-appointed producer.	Consent Order \$1,000 admin. fine 8/19/05
C-1534 Sentry Life Insurance Company Stevens Point, WI	Violated Title 210 NAC Chapter 7, §§007.01 and 008.01. Failed to inform representatives of regulation requirements; failed to require replacement form.	Consent Order \$1,500 admin. fine 9/12/05

PROPERTY & CASUALTY DIVISION

Filing Methods for Various Lines of Insurance

LB 119, which became effective September 4, 2005, resulted in many of the lines, including personal lines, being “File and Use.” Below is a summary, by filing method, that we hope will assist you in determining the appropriate method of filing submission.

File & Use	Prior Approval
100 Commercial Lines Property	341 Medical Professional Liability
150 Personal Lines Property	610 Workers’ Compensation (rates are file & use)
200 Commercial Inland Marine	830 Mortgage Guaranty
250 Personal Inland Marine	840 Title
300 Commercial General Liability	850 Credit Property
330 Personal Liability	860 Credit Unemployment
340 Professional Liability	950 Misc. including GAP—(prior approval if written as a group policy with premiums charged back to covered individuals)
342 Directors and Officers	
343 Lawyers Professional	
380 Commercial Umbrella/Excess	
390 Personal Umbrella/Excess	
400 Commercial Auto	
450 Personal Auto/Motorcycle/Rec Veh.	
460 Boat owners	
500 Homeowners	
505 Combination/Homeowners/Auto	
510 Homeowners with Business	
520 Farm Monoline & Pkg.	
530 Other Dwelling Pkg. Policies	
540 Mobile Home/Mobile homeowners	
600 Crop Hail	
610 Workers’ Compensation (forms—prior approval)	
620 Crime (Burglary & Theft)	
630 Fidelity	
650 Glass	
660 Boiler & Machinery	
700 Commercial Package	
800 Aircraft (rates are not filed)	
880 Credit	
900 Auto Warranty (rates are not filed)	
940 Financial Guaranty	
950 Misc. including GAP – (prior approval if written as a group policy with premiums charged back to covered individuals)	
	Not Filed
	Ocean Marine
	Aircraft (rates)
	Financial Guaranty (except so-called GAP coverage)
	Surety (except what the SAA and other advisory organizations must file)
	Inland Marine “exempt” classes (rates)
	Auto Warranty (rates)
	Warranty other than Auto

The revisions to CB-50, as well as the explanations in the Agent/Underwriting Manual, should ease the filing process.

CB-50

Our new filing manual, CB 50, can be found on our web site. We have updated the manual to include those changes that went into effect on September 4, 2005. At the same time, the Agent/Underwriting Manual was updated and can also be found on our web site. The explanations in the Agent/Underwriting Manual, along with the revisions to CB 50, should make your filing process a little easier. The Department's web site is located at www.doi.ne.gov.

The list of controlled/uncontrolled inland marine coverages has been updated and can be found on the Department's web site under P/C Guidelines and Information.

Controlled/Uncontrolled Inland Marine Coverages

We recently updated the list of controlled/uncontrolled inland marine coverages. As in the past, all inland marine forms need to be filed with us. For those classes of inland marine that are considered uncontrolled, a rate filing is not necessary. If the class is considered a controlled line, we feel that specific rates can and should be developed, and a rate filing is required to be made. The updated list can be found on the Department's web-site, www.doi.ne.gov, under P/C Guidelines and Information.

EXAMINATION DIVISION

Pre-Need Exams Completed During Third Quarter, 2005

Brand-Wilson Funeral Home, Inc.
Hall Funeral Chapel
Heafey-Heafey-Hoffman-Dworak-Cutler, Inc.
Lockenour-Jones Funeral Home
Rice Funeral Home
Spear & Warne-Johnson Funeral Homes

Financial Examinations Completed During Third Quarter, 2005

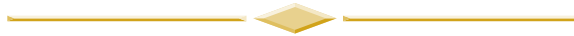
Continental General Insurance Company

Financial examination reports become public documents once they have been placed on official file by the Department. Copies may be obtained from the Department at the cost of \$.50 per page.



Department Calendar

November 11:	DOI Closed - Veteran's Day
November 17:	Medical Malpractice Surcharge Hearing 10:00 a.m., DOI 5th Floor Conference Room
November 24-25:	DOI Closed - Thanksgiving
December 26:	DOI Closed - Christmas Day observed
January 2:	DOI Closed - New Year's Day observed
January 16:	DOI Closed - Martin Luther King Day observed



**State of Nebraska
Department of Insurance
941 "O" Street, Suite 400
Lincoln, Nebraska 68508**

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